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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

LEHMAN BROTHERS HOLDINGS INC., *et al.*,
Debtors.

Chapter 11 Case No.

08-13555 (JMP)

(Jointly Administered)

Exhibit 1

*****Excerpts*****

1

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 19, 2008

4:36 PM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

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1 going to ask that question. So --

2 THE COURT: I hate to be that predictable.

3 MR. MILLER: There is a document -- maybe it'd be
4 better, Your Honor, if we do it orally.

5 THE COURT: Fine.

6 MR. MILLER: My partner, Ms. Fife, will do that. And
7 with some assistance from Ms. --

8 THE COURT: Let me just check on something because --
9 and this is purely technical. During the first phase of the
10 hearing, I was told that those people who are listening in
11 spillover courtrooms had a very hard time hearing me. I'm
12 having some difficulty as compared with our last hearing with
13 the amplification coming out of the podium. And I just want to
14 make sure that we're not suffering system overload. Okay.
15 That's on. And let me also make the announcement, whenever
16 anyone speaks for the record, this is always true here, but
17 given the number of people, please identify yourself before
18 speaking.

19 MS. FIFE: Thank you, Your Honor. Lori Fife from
20 Weil Gotshal & Manges on behalf of the debtors. Let me try to
21 summarize the changes that were made to the transaction. In
22 terms of the economic changes, they result largely because of
23 the markets, unfortunately. And from the time that the
24 transaction was actually entered into till now, the markets
25 dropped and the value of the securities dropped as well.

1 So, originally, we were selling assets that had a
2 value of seventy -- approximately seventy billion dollars. And
3 today, Your Honor, we're only selling assets that have a value
4 of 47.4 billion dollars.

5 Barclays is assuming liabilities, however, of 45.5
6 billion dollars in connection with those assets. So that has
7 not changed from the original transaction. There was an upside
8 sharing in the original transaction. There was going to be a
9 true-up twelve months later on and that has been eliminated
10 from this transaction.

11 Barclays is still agreeing to pay the cure amounts on
12 any leases that it assumes or that we assume and assign to it.
13 Barclays is also agreeing to the same employee compensation
14 arrangements. And it is also agreeing to pay the 250 million
15 dollars of goodwill to LBI.

16 With respect to the real estate assets, Your Honor,
17 that was -- we had said at the last hearing, I believe, it was
18 approximately a billion dollars. Since that time, an appraisal
19 has come in and it is below that amount. The contact had a
20 provision which allowed the purchaser really to purchase the
21 building at the appraised amount. So we have some negotiations
22 to go, but I believe that the purchase price will come down by
23 approximately a hundred million dollars.

24 There were two other real estate properties also
25 which we received appraisals for which, similarly, were lower

1 customer accounts were being transferred anyway.

2 There was a change that was made to the license of
3 the Lehman Brothers' name. It was perpetual. It is now two
4 years but we don't really believe that that's a problem. The
5 IMD business, which is essentially Neuberger Berman and some
6 other related entities, will have a perpetual license to use
7 the name.

8 There was a provision in the old agreement pursuant
9 to which the parties were sharing the residential real estate
10 mortgages. There is no longer that provision. Barclays was
11 required to post collateral, actually this morning, in order to
12 get DTC to open up trading. And that collateral was posted --
13 the residential real estate mortgages was posted to DTC.
14 Pursuant to this transaction, Barclays is taking over and
15 guaranteeing all of those transactions. And they are assuming
16 the risk related to those transactions so that collateral will
17 remain with Barclays.

18 THE COURT: What's the aggregate value of the posted
19 collateral?

20 MS. FIFE: One second, Your Honor.

21 (Pause)

22 MS. FIFE: Your Honor, I'm not -- excuse me? There
23 are 300,000 trades but we're not sure the value of the
24 collateral. Perhaps during the rest of the hearing we can find
25 that amount out for Your Honor.

1 all of that collateral. So what the amendment to the APA says
2 is that the fifty percent will be returned, as long as it's
3 there. If something really terrible happens in the world and
4 the settlements don't work and we have to use that collateral,
5 then there will be nothing to return. But the anticipation is
6 that if the world remains somewhat stable that the fifty
7 percent that was now transferred to Barclays will be
8 transferred back to Lehman. That is the expectation.

9 THE COURT: All right. I appreciate that
10 explanation.

11 One comment before you continue, Ms. Fife. I'm just
12 once again hearing the Geiger counter. And we are connected to
13 two extra courtrooms and I know that there are people
14 participating at various occasions by telephone through
15 CourtCall. And I'm hearing increased static on the line. So,
16 I'm just going to request everybody who is participating in
17 this hearing, whether by telephone or in person, who has an
18 electronic device to shut it off. And if you're on the phone,
19 since you're just listening, please mute your phone.

20 MS. FIFE: Thank you, Your Honor. I'll continue
21 going through some of the changes, if that's okay. There was a
22 provision in a deal originally which required the debtors to
23 transfer 700 million dollars in cash to Barclays. And that is
24 no longer the case. There's no cash that's being transferred
25 to Barclays.

1 case to protect the public customers and ensure stability and
2 preservation of customer interests. Their actions are to be
3 commended, Your Honor. And I believe, Your Honor, that the
4 SIPC proceeding has been referred, I hope, to Your Honor.

5 THE COURT: I've seen Judge Lynch's order. I have a
6 certified copy of it and the order includes a decretal
7 paragraph removing those proceedings to this court. I'm
8 satisfied that the seal is in fact genuine and I'm prepared to
9 proceed with full authority.

10 MR. MILLER: And, Your Honor, Mr. Giddens is here
11 with Mr. Kevin (sic) Caputo from SIPC and the president of
12 SIPC, Your Honor, Mr. Stephen Harbeck who's sitting in the jury
13 box.

14 THE COURT: Gentlemen, welcome.

15 MR. GIDDENS: Thank you, Your Honor.

16 MR. MILLER: Barclays, Your Honor, has extended the
17 sale to enable this extraordinary transaction and hopefully to

18 be consummated. Yesterday, as Your Honor has heard, Barclays
19 basically stepped into the shoes of the Federal Reserve in
20 connection with the Primary Dealer Credit Facility as to the
21 45.5 billion dollars Lehman borrowed last Monday and received
22 the collateral that Lehman had posted in connection therewith.

23 Because of the circumstances this week, Your Honor,
24 the operations of LBI have resulted in approximately 300,000
25 sales, which is very significant. In addition, Your Honor,

1 because of the administration proceeding in the United Kingdom
2 for LBIE and the freezing of all of the assets of LBI that were
3 in the possession of LBIE, which I believe, Your Honor, stands
4 for Lehman Brothers England, relating to repo financings, the

5 result is that we were unable -- or LBI is unable to deliver to
6 Barclays the assets that were originally intended under the
7 APA. That's one of the reasons, Your Honor, for the amendments
8 that we heard about earlier today.

9 There are many moving parts in what we are trying to
10 do, many of which are beyond the control of Lehman or Barclays
11 as market forces operate to affect the value of the transaction
12 and the assets. Enormous problems did arise in connection with
13 clearing transactions that have caused a number of
14 modifications to the transaction. The necessity of assuring
15 DTC and other clearing institutions who will not expose
16 themselves to additional liability of some kind has been
17 enormously time consuming.

18 It's because of that, Your Honor, that we have heard
19 about these changes. But if Your Honor will look at the basic
20 agreement, the amount of cash consideration will be relatively
21 the same except for the issues with respect to the value of the
22 real estate. The 250 million dollars being paid for the
23 goodwill of LBI will go to LBI. The real estate, 745 Seventh
24 Avenue, and the two data centers in New Jersey, that's with a
25 variation, Your Honor, and there's some negotiation to be done

1 dealer business. The value of the real estate being
2 transferred to Barclays pursuant to the transaction is subject
3 to negotiation with respect of the appraised values. That the
4 building on Seventh Avenue is subject to an appraisal which has
5 been provided to Barclays. And that appraisal is in the area
6 of 900 million dollars to 100 million dollars. And that the
7 appraisal was done by CB Richard Ellis. And it was prepared
8 for the other debtor in this case, LB 745 LLC and Barclays
9 Capital Inc. And it is a voluminous appraisal of the
10 properties which we will offer into evidence at the appropriate
11 time, Your Honor.

12 And that he would also testify that an appraisal of
13 the two data centers was also directed and that CB Richard
14 Ellis was also engaged to undertake that appraisal. And that
15 appraisal has established the value for the purpose of the
16 negotiations, Your Honor. And as pointed out earlier in the
17 proceeding, those values have come in at slightly less -- I
18 shouldn't say slightly, less than was originally projected.

19 So that was a very negotiated term, and the reason
20 for the transfer of these properties, Your Honor, is that they
21 are integral to the smooth transition of the businesses.

22 Barclays will also assume exposure for the employees
23 that accept offers of employment, which is estimated to have a
24 value of approximately -- an exposure of approximately two
25 billion dollars.

1 Barclays is also assuming the cure amounts relating
2 to contracts and leases that will be assumed pursuant to the
3 asset purchase agreement. And that has a potential exposure,
4 Your Honor, of 1.5 billion dollars that he would testify to.

5 Barclays is also paying the real estate transfer
6 taxes, which are estimated to be approximately thirty million
7 dollars.

8 Mr. McDade would testify that the financial community
9 has known that Lehman has been under stress for some time.
10 Certainly, going back to the time that Bear Sterns was bailed
11 out. Potential purchasers have known that Lehman has been
12 searching for a buyer since well before the Chapter 11 case
13 commenced. And that those ethics, those strategic alternatives
14 that were being pursued involved parts of Lehman as well as the
15 whole of Lehman. And that the notoriety attached to that did
16 not produce any interested parties other than the ones I
17 mentioned -- he mentioned.

18 During the meeting at the Federal Reserve Bank last
19 week, Bank of America, JPMorgan, Merrill Lynch and Barclays
20 were all present, showing interest in the broker-dealer assets.
21 It was clear to each party that if Lehman was unable to reach a
22 deal it would most likely have to commence cases under Chapter
23 11 of the Bankruptcy Code. That would not only have an adverse
24 impact upon their businesses but also upon the international
25 markets.

1 He would testify that since the commencement of the
2 Chapter 11 case, Lehman's senior management and its advisors
3 have not undertaken an intensive marketing of the business and
4 the assets to be sold. But instead focused on reaching an
5 agreement with the most eligible interested buyer for these
6 assets.

7 That notwithstanding the lack of a specific program
8 for marketing, the sale of Lehman's broker-dealer business has
9 been known worldwide. And, yet, he would say nobody has
10 expressed an interest to step into the shoes of -- excuse me,
11 step into the shoes of Barclays, Your Honor.

12 Lehman has not received any other interest since the
13 commencement of the Chapter 11 cases. If Lehman was approached
14 by another potential buyer that he would consider the offer,

15 provided that the company had sufficient liquidity to operate
16 the business without jeopardizing customer accounts. That has
17 not happened, Your Honor. So it is almost academic.

18 Mr. McDade would testify, Your Honor, that if the
19 sale with Barclays is consummated, customer accounts would
20 continue on a seamless, uninterrupted basis and trading would
21 continue on a normal basis, thereby maintaining the billions of
22 dollars in value.

23 At the same time, the jobs of thousands of employees
24 would be saved and will be entitled to substantial benefits
25 from Barclays in the form of compensation, bonuses and

1 severance payments that are based upon the employee's prior
2 performance while with Lehman.

3 He would testify to the consummation of the
4 transactions makes available a greater pool of assets to the
5 debtors' estates, because the exposure under Lehman Holdings
6 guarantee to the broker-dealer will be substantially less. If
7 the transaction does not close today or over this weekend, Your
8 Honor, Mr. McDade would testify that the effect on the broker-
9 dealers business and on Lehman Holdings would be devastating.
10 First, the failure to consummate the transaction would cause
11 default under the DIP facility and require Lehman Holdings to
12 repay the outstanding amounts under that facility.

13 He would testify that the liabilities in the hundreds
14 of billions of dollars would be triggered against Lehman
15 Holdings which would in turn deplete the property available to
16 distribution to creditors. It would adversely affect the
17 debtors other nondebtor subsidiaries to the extent they have
18 any value.

19 He would testify, Your Honor, that if the transaction
20 is not consummated, it will result in the largest failure of a
21 broker-dealer in the history of the United States and will
22 cripple the credit markets for some time to come.

23 He would further testify, Your Honor, that the shock
24 of this transaction not being consummated in the public markets
25 could be immeasurable and could ignite a panic in the financial

1 condition that we now face in the United States.

2 He would testify that it is essential to an orderly
3 financial market that this transaction be consummated as early
4 as possible in the interest of all stakeholders of these two
5 cases. And in the interest of the public in general and the
6 economy in general, and to avoid a dislocation in the market,
7 Your Honor.

8 Thank you, Your Honor.

9 THE COURT: And that concludes the proffer?

10 MR. MILLER: Yes, Your Honor.

11 THE COURT: Is there anyone who wishes to cross-
12 examine Mr. McDade with respect to the proffer or may I simply
13 accept the proffer in the form it has been offered by Mr.
14 Miller without further examination?

15 MR. QURESHI: Your Honor, Abid Qureshi, Akin, Gump,
16 Strauss, Hauer & Feld on behalf of an ad hoc group of
17 noteholders of LBHI. We would like to cross-examine the
18 witness.

19 THE COURT: All right. Mr. McDade should come to the
20 stand then.

21 (Witness is sworn)

22 CROSS-EXAMINATION

23 BY MR. QURESHI:

24 Q. Good evening, Mr. McDade. You testified through the
25 proffer that you were involved in the negotiations concerning

1 with Barclays.

2 Mr. Ridings would testify that the negotiations were
3 at arm's length, difficult and aggressively negotiated by the
4 parties, that the asset purchase agreement is the result of
5 good faith negotiations.

6 He would testify that the parties worked around the
7 clock to finalize the purchase agreement because they realize
8 that time was of the essence and that the business would not
9 survive without an immediate infusion of new liquidity.

10 Between Monday and Wednesday of this week, he would
11 testify the parties exchanged numerous bids and asks and turned
12 drafts of the agreement countless times.

13 He would also testify that since executing the asset
14 purchase agreement the parties have continued to work nonstop
15 in order to prepare for closing, contracts have been identified
16 for assumption or assignment and, with the authority from the
17 Court, debtor-in-possession financing was obtained for LBHI.

18 He would testify that these assets have substantially
19 greater value if they are sold as a going concern. Despite the
20 tremendous publicity associated with this case, not one firm,
21 other than Barclays, showed up with an interest in the assets
22 as a whole. Without Barclays, Lehman would be forced to sell
23 discreet assets for a fraction of the value that will be
24 realized from this transaction.

25 By selling the business as a going concern, Lehman

1 has preserved approximately nine to ten thousand jobs for its
2 employees and avoided significant costs and claims that would
3 have resulted if there were mass layoffs and a cessation of
4 operations.

5 He would also testify that calls were placed to a
6 number of prospective bidders over this week. He would testify
7 that Lehman's situation was widely known in the financial
8 services industry and yet no one really appeared to show an
9 interest.

10 He will testify that Lazard had twenty-one contacts
11 with entities that expressed an interest but not one of them,
12 nor any other entity, had expressed the desire or ability to
13 step into Barclays' shoes.

14 Practically, he would testify there were few
15 potential purchasers for these assets. Of this universe, most
16 of the funds that could purchase these assets have their own
17 cash flow problems to contend with and are not looking to
18 expand.

19 Any prospective purchaser would need access to the
20 Federal Reserve Funds to operate Lehman's business. The list
21 of firms authorized to trade directly with the Federal Reserve
22 System and borrow from the so-called "window" is limited. Each
23 entity must meet stringent capital and regulatory requirements.

24 He would testify that, in his opinion, Barclays'

25 offer is the highest and best offer for these assets.

1 Lehman is selling its North American investment
2 banking and capital markets business. This business focuses on
3 fixed income, equities, trading, advisory services, futures and
4 investment banking. The costs to Lehman and counterparties, as
5 pending transactions unwind, if this transaction is not
6 approved, will run into the many billions of dollars.
7 Counterparties will be required to liquidate their collateral
8 positions, which may entail a wholesale dumping of the
9 collateral into the marketplace with the attendant erosion of
10 values. The deficiencies that counterparties may incur will
11 result in massive claims against the assets of the Lehman
12 estates. Ten to twelve thousand employees may not find any
13 employment. Any failure to consummate may potentially cause a
14 major shock to the financial system.

15 Although the potential sale of Lehman assets has
16 generally been known to the financial community for many months
17 and that the current transaction has gotten enormous and wide
18 media attention, as previously stated, only twenty very limited
19 inquiries were made from outside parties.

20 Again, he would testify, Your Honor, the universe of
21 potentially qualified and capable purchases is extremely
22 limited by the huge financial commitment that would have to be
23 made and the ability to access federal funds. At most, there
24 are less than a half dozen possible entities that might
25 qualify, and most of them have their own financial needs.

1 sitting out there have not eaten and haven't had a break in a
2 while and I think due process also includes no cruel and
3 inhuman punishment. And so I think that it may be timely,
4 before I hear from the debtors and/or also from the purchaser,
5 to take a fifteen minute break so everybody can refresh
6 themselves a little bit.

7 So since it's already as late as it is, it might as
8 well be a little bit later and let's take a fifteen minute
9 break and I'll see you at 11:45.

10 (Recess from 11:30 till 11:45 p.m.)

11 THE COURT: Be seated, please. Mr. Miller?

12 MR. MILLER: Good evening again, Your Honor. And
13 given the lateness of the hour, Your Honor, I expect to be
14 exceedingly brief, Your Honor. There have been an awful lot of
15 objectors who have stood at the lectern and it's, sort of, hard
16 after listening to twenty odd people, to remember all of the
17 comments that were made and objections that were made. But
18 there's one basic theme, Your Honor, that has gone through the
19 statements by Mr. Golden, Mr. Rosner and some others. That
20 apparently there is the ability to stop everything, take two or
21 three weeks or maybe two or three months, while we explore
22 every possible alternative. And there is no recognition, Your
23 Honor, that we have a patient that is hemorrhaging on the
24 operating table and there is no intensive care ward for this
25 patient.

1 Things have happened, Your Honor, in the last two
2 days. First of all, we have a SIPC proceeding, Your Honor. A
3 trustee has been appointed for SIPC and the assets of LBI are
4 under the jurisdiction of that proceeding. They're gone, Your
5 Honor. And as it was pointed out in the testimony today, there
6 are 639,000 accounts with a value of something like 138 billion
7 dollars that are sitting now waiting transfer. And if this
8 sale doesn't go through, Your Honor, those accounts are going
9 to be stuck. And they're going to be stuck for months and
10 months.

11 Mr. Golden says that he protects the interest of
12 creditors. I would say, Your Honor, the debtor is protecting
13 the interest of creditors. If this transaction doesn't go
14 through, Your Honor, LBI is out of business. It already is --
15 will be in a SIPC liquidation proceeding.

16 There is no money at LBHI. The DIP loan will become
17 due, 200 million dollars, as payable. Look what happened
18 yesterday, Your Honor. The CME closed us out and we took a
19 loss of one billion, six hundred million dollars. This
20 administration is finished if this transaction is not
21 completed, Your Honor.

22 It's a shame, Your Honor, that the 7,000 people who
23 are waiting for transfers today in various computer points
24 throughout the country, did not get what they expected to. And
25 I'm not being critical of anybody, Your Honor; everybody has a

1 right to express their views. But we are in a situation in
2 which we have a fragile asset that can't. This is not a case
3 where you can sit and go out and explore every single
4 opportunity. And in that connection I might say, Your Honor,
5 that for months, certainly going back to the collapse of Bear
6 Sterns and before that, Lehman has been deleveraging. It has
7 been participating in every effort to deleverage its balance
8 sheet.

9 It got down to -- let me call it the final round,
10 where there only were two possibilities: the Bank of America
11 and Barclays. And the Bank of America went off and did
12 something else. Barclays -- that transaction was unable to be
13 consummated. So in the exercise of good business judgment,
14 management and the board of directors turned to get the best
15 transactions they could get in the limited time.

16 And, Your Honor, there aren't many candidates that
17 could do this. You needed somebody with the kind of capital,
18 credit standing of Barclays. There aren't that many people out
19 there. And you can't go around and cherry pick these assets,
20 Your Honor. This is an integrated operation.

21 So what is happening, Your Honor, we are protecting
22 the customers. There's testimony on the record, Your Honor, as
23 to what the consequences would be if this transaction doesn't
24 go forward. Both Mr. Ridings and Mr. McDade have indicated
25 there won't be anybody in the building. If there's no

1 assurance of an ongoing operation for the LBI employees, which
2 are most of the employees in 745 Seventh Avenue, they're not
3 going to stay there, Your Honor. These are people who have
4 bills that they have to meet, they need employment. They need
5 some element of certainty. They're all expecting, and I'm not
6 putting any pressure on Your Honor, they're all expecting that
7 Your Honor will rule --

8 THE COURT: The pressure is already there, Mr.
9 Miller.

10 MR. MILLER: I'm sorry?

11 THE COURT: The pressure is already there.

12 MR. MILLER: Thank you, Your Honor.

13 THE COURT: Not from you.

14 MR. MILLER: No, no. I was looking for that woman.
15 There is pressure on everybody, Your Honor. I mean, I was just
16 saying to somebody, here we are sitting in a courtroom at 5
17 minutes after 12, and we've been here for a long time, and that
18 is evidence of the concern that everybody has. And I
19 understand the issues, Your Honor. As we said on the very
20 first day, this is an extraordinarily exceptional case. There
21 is so much at stake here. And if we miss this opportunity we
22 are talking about a wholesale liquidation with all of the
23 consequences that come out of that liquidation. And people can
24 speculate as to what's going to happen.

25 I mean, I was a little shocked at Vanguard, who

1 happens to be a competitor of Neuberger, saying don't close
2 this. It'll be a good thing for the marketplace, for somebody
3 maybe. So I think that argument, Your Honor, just doesn't
4 carry water.

5 Now I would turn, just for a minute, Your Honor, to
6 the LBIE thing, which is confusing this whole matter. I point
7 out, Your Honor, LBIE went into administration before the
8 Chapter 11 case was filed. And PWC froze all transactions
9 immediately and it became the administrator. So those
10 transactions were frozen.

11 Now, what we're talking about, Your Honor, is eight
12 billion or five billion, whatever it might be, Your Honor, that
13 was a cash sweep. Cash, we're not transferring any cash to
14 Barclays, that's out of the agreement. So if Mr. Rosner or
15 somebody else has a claim, they can assert a claim. It has
16 nothing to do with this transaction.

17 And I would also point out, Your Honor, that PWC as
18 the administrator is not opposing the sale. In fact, they're
19 supporting the sale. They're just reserving their rights and
20 they should reserve their rights. If they have a claim, this
21 is all going to be investigated. But we have to look at the
22 bigger picture, Your Honor, what happens if we don't close this
23 transaction. And Mr. Ridings testified, Mr. McDade testified
24 as to the consequences that will affect these estates. We
25 cannot reverse what has already happened.

1 And in the short period from Wednesday to Friday,
2 notwithstanding that Your Honor approved the sale procedures,
3 we lost the confidence of the market. And if you don't approve
4 this transaction, Your Honor, LBI is finished as an operating
5 business. It will not add any value to anybody. And all we
6 will have left, Your Honor, is a winding down estate and
7 holdings. And if that building is empty, Your Honor, it won't
8 be worth 900 million dollars because that's the nature -- that
9 appraisal that we got assumed a value with the building in use.

10 So the dangers here, Your Honor, are extraordinary.
11 This is a good transaction, Your Honor. We spent a lot of time
12 listening to landlords. All of those issues, Your Honor, are
13 minor and will be resolved in one way or the other. Either
14 Your honor will decide them or there will be mutual
15 arrangements and agreements among the parties.

16 The drafting of the order, I think, Your Honor, if we
17 all sit down in good faith we will come up with an order. I
18 think we will come up with an order tonight if Your Honor were
19 to approve this transaction.

20 THE COURT: I'm prepared to stay here for as long as
21 it takes if you're prepared to stay here for as long as it
22 takes.

23 MR. MILLER: Your Honor, I can't think of a better
24 place to be.

25 THE COURT: Do you want to order pizza? How do you

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1 want to nourish yourself between now and the entry of the
2 order?

3 MR. MILLER: With pepperoni?

4 THE COURT: Whatever you want.

5 MR. MILLER: I agree with Mr. Bienenstock -- maybe
6 let me rethink that. Your Honor, I would stay without food. I
7 think that's a good thing. And I would lock all of the
8 latrines. I'm sorry; I withdraw that remark, Your Honor.

9 THE COURT: Unfortunately, it's on the record of this
10 proceeding.

11 MR. MILLER: And, Your Honor, the proceeds of the
12 sale, the 250 million dollars, is going to the SIPC trustee,
13 the one billion 290 million dollars is going to the estate.
14 There is a creditors' committee. Those proceeds are safe.
15 Hopefully, we're going to go into the more conventional
16 procedures of Chapter 11.

17 I don't want to use the melting ice cube. It's
18 already half melted, Your Honor. The steps have had happened,
19 the things that have happened since Wednesday, make it
20 imperative that this sale be approved. In the interest of all
21 of the stakeholders, including Mr. Golden's clients, they will
22 benefit by this, Your Honor, because if the alternative
23 happens, there will be very little to distribute to creditors,
24 if anything.

25 So we submit to Your Honor that this sale should be

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1 approved and should be approved tonight. And we should get the
2 orders entered and get the transfers done before there's any
3 other prejudice and harm. Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Miller.

5 MS. GRANFIELD: Really brief, Your Honor, because I
6 won't tread over any ground that Mr. Miller just went over.
7 The importance, if Your Honor is so disposed to approve the
8 transaction of staying here, getting the order done and getting
9 it entered tonight, my client wanted me to express to you the
10 importance is really not only in terms of the operations, the
11 moving of the money, the preserving of the value for this
12 estate, but the importance in terms of staying here and get it
13 done tonight is really with respect to the employees who we've
14 already heard many times have really had a horrible week. They
15 have had a bit of hope in terms of being able to return to a
16 more business as usual. And we're really concerned if they
17 don't wake up tomorrow and see that not only has it been
18 approved but the order's been entered and we're moving forward
19 towards closing.

20 Just generally, with respect to the objections,
21 Barclays Capital cannot pay out the sums that have been put on
22 the record tonight and subject itself to collateral attack.
23 It's not doing this transaction to paint a bullseye on its back
24 for every subsidiary creditor, landlord, fund that wants to
25 figure out who's a deep pocket, oh, Barclays is doing this deal

1 have concluded that this is really not a question of due
2 process being denied. This is a question of due process being
3 pursued in good faith by all parties to the transaction, even
4 the objectors. It is a testament to the importance of this
5 transaction that this courtroom is still packed. I have no
6 idea what's going on in the overflow rooms. This is not an
7 ordinary Chapter 11 case.

8 This is not simply approving the transaction because
9 Mr. Miller is putting pressure on me to do so. This is not
10 approving the transaction because I know it's the best
11 available transaction. I have to approve this transaction
12 because it's the only available transaction.

13 I believe that one of the remarkable aspects of our
14 Bankruptcy Code, as it has evolved, is its remarkable
15 flexibility to different circumstances. The lawyers who are
16 appearing before me this evening are truly among the best and
17 the brightest in the field. And some have participated in the
18 evolution of bankruptcy as a field, nationally and

19 internationally. We must close this deal this weekend not
20 because the markets demand it, although that's certainly a part
21 of it. Lehman Brothers became a victim. In effect, the only
22 true icon to fall in the tsunami that has befallen the credit
23 markets. And it saddens me. I feel that I have a
24 responsibility to all the creditors, to all of the employees,
25 to all of the customers and to all of you. Arguments have been

1 made this evening by objectors, some questioning whether or not
2 if I were to delay approval another better transaction might be
3 realized or discovered. And that's a preposterous notion. As
4 I said on Wednesday, it's very apparent to me that for a
5 transaction of this sort to happen, only Barclays can do it.
6 Only Barclays has the support of the regulators. Only Barclays
7 is prepared to close. Only Barclays can deliver the customer
8 accounts to safe harbors. And the customer property, which is
9 the principal concern of the SIPC trustee, a case which is also
10 pending before me now, will be best protected by virtue of
11 approving the sale.

12 The objectors, and I'm not putting them all in the
13 same basket, principally, Mr. Golden and Mr. Rosner's clients,
14 argue passionately that I should not be unduly influenced by
15 the arguments made by the debtors that the markets will, in
16 fact, tank if this deal is not approved and that more time
17 should be afforded to searching for an alternative. I am
18 persuaded that to do so would be reckless. I believe that the
19 debtors have acted in the utmost of good faith in trying to
20 make the best out of a terrible situation. The comments made
21 by the SIPC trustee so many hours ago in reference to the
22 cooperation, the unusual cooperation that has characterized the
23 commencement of the SIPC proceeding and the coordination of
24 that proceeding with this bankruptcy case demonstrate not just
25 that New York lawyers and consultants can be good citizens but

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1 that we all recognize that we're engaged in something here
2 that's very special. This is the most momentous bankruptcy
3 hearing I've ever sat through either as a lawyer or as a judge.
4 And I'm guessing I'm not alone in that sense.

5 One could be a theoretical bankruptcy jurist and say
6 transactions such as this should always be subject to more time
7 so that parties can better assess the consequences of the
8 transactions. Bankruptcy Rule 6003 which was enacted recently
9 was designed among other things to slow down activities in the
10 first twenty days of big bankruptcy cases. This is Friday.
11 This case was filed on Monday. What we're doing is unheard of
12 but imperative.

13 I am completely satisfied that I am fulfilling my
14 duty as a United States bankruptcy judge in approving this
15 transaction and in finding that there is no better or
16 alternative transaction for these assets, that the consequences
17 of not approving a transaction could prove to be truly
18 disastrous. And those adverse consequences are meaningful to
19 me as I exercise this discretion. The harm to the debtor, its
20 estates, the customers, creditors, generally, the national
21 economy and the global economy could prove to be incalculable.

22 Moreover, it's not just about avoiding harm.
23 Approving the transaction secures whether for ninety days or
24 for a lifelong career employment for 9,000 employees at Lehman,
25 and holds together an operation the value of which is really

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1 embedded in the talent of the employees, their knowledge, their
2 relationship, their expertise and their ability to create value
3 to the economy.

4 Earlier today, I guess it was yesterday, I said that
5 I was concerned about the real estate value in this
6 transaction. I still am but I'm getting over it. I believe
7 that sophisticated negotiations cannot be parsed neatly into
8 the constituent parts because they're integrated and
9 interrelated in the result of give and take. I'm unable to
10 value a piece of New York City real estate and there's been no
11 real evidence presented although the appraisal has been alluded
12 to. I suppose it is theoretically possible that if the office
13 building at 745 Seventh Avenue were subject to marketing and
14 auction procedures over a lengthy period of time and were
15 somehow viewed as a quasi trophy property that perhaps it might
16 bring more value. But that's speculation. As to the data
17 centers, I have no idea. I'm not even sure I know what a data
18 center. I expect it's a place that has servers and deals with
19 the back office needs of a large operation such as this. And
20 that, in a sense, describes part of the problem for me as a
21 judge here. I know that I need to approve this transaction. I
22 am absolutely confident in my judgment. But I also know that
23 this is so exceptional relative to the experience that I have
24 had both as bankruptcy lawyer and as judge to know that it
25 could never be deemed a precedent for future cases unless

1 someone could argue that there is a similar emergency. It's
2 hard for me to imagine a similar emergency.

3 And so, as to those objectors who say it would be
4 establishing bad precedent to approve this transaction, I say
5 no. This is not a bad precedent. To the contrary. It's an
6 extraordinary example of the flexibility that bankruptcy
7 affords under circumstances such as this. It's an example that
8 creative minds working diligently day and night even under the
9 worst of circumstances can create remarkably complicated
10 transactions that preserve value. I am proud to have been part
11 of this process.

12 I'm also satisfied that if everybody stays who needs
13 to comment on the order that some of the legal issues that have
14 been raised during the objection phase of this hearing can be
15 addressed. I note the arguments made by Mr. Bienenstock on
16 behalf of the Walt Disney Company, that I can't do anything
17 that's illegal. And he's right. However, it's not illegal to
18 enter orders that include from time to time language that
19 people dispute or language that may be ambiguous or language
20 that might have been better drafted. I regret to say that I
21 think I do it every day. And most of it's because I enter
22 orders that you draft. So, I don't think it's illegal for me
23 to do something that may lead to an argument in the future as
24 to what the language of the order means.

25 As far as Mr. Rosner's arguments are concerned and